IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 987 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

HARIBHAI BHALABHAI

Appearance:

1. Criminal Appeal No. 987 of 1986
PUBLIC PROSECUTOR for Petitioner No. 1
MR JM BUDDHBHATTI for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 03/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant-State of Gujarat has challenged in this appeal the impugned judgment and order dated 30.4.1986 passed by the learned Addl. Sessions Judge, 3rd Court, Narol, Ahmedabad in Sessions Case No.19 of 1996 whereby the learned Judge convicted the respondent-accused-Haribhai Bhalabhai for the lesser offence under Section 325 of the IPC and sentenced him to suffer 1 year and 6 months RI and to pay a fine of Rs.500/= in default to further undergo 2 months RI. But acquitted him for the major offence under Section 302 of the IPC for committing murder of Punjabhai Gandabhai on 29.8.1985 at 9.00 a.m. Learned Judge acquitted respondent-respondent No.2-Rudabhai Bhalabhai, who was charged for the offence under section 302 of the IPC r/w. Section 34 of the IPC. This order of acquittal qua both the respondents-accused was challenged in this appeal.

#. When this appeal was placed for admission on 13.4.1987 before the Division Bench of this court, leave was granted and appeal was admitted only against respondent No.1-Haribhai Bhalabhai and bailable warrants in sum of Rs.2,000/= was ordered to be issued against him. However, qua, respondent-accused No.2-Rudabhai Bhalabhai, the Division Bench dismissed the appeal at the admission stage itself by observing that the order of acquittal passed by the learned Judge against the accused No.2 cannot be said to be erroneous or illegal by any way. Thus, we are required to decide this appeal against the order of acquittal for the major offence under Section 302 of the IPC against respondent No.1-Haribhai Bhalabhai.

#. The incident in question took place on 29.8.1995 at 9.00 a.m. in the sim of the village for grazing the cattle. It is alleged that respondent No.1 got all of a sudden excited and started abusing deceased-complainant-Punjabhai. It is alleged that respondent-accused No.1 gave blow with stick on the front portion of the head of the complainant, which was about half inch and because of that injury blood started coming out. By that time, respondent-accused No.2 gave blow with stick on the waist of the complainant. Thereafter, the complainant fell down. On hearing the shouts of the complainants, Kalubhai Chhababhai came to the place of the incident and he was also beaten by the accused by the sticks. Complainant lodged the complaint before the police and the investigation started. However, he succumbed to his injuries only on 22.9.1985. That too

because of proper treatment not being given to him and due to cerebral obsess he died after a period of 24 days of the incident. On the death of the complainant, police filed charge sheet against respondents-accused for the offence under Section 302 r/w. Section 34 of the IPC before the court of learned Magistrate. The learned Magistrate committed the case to the court of Sessions. The learned Judge, after appreciating the evidence of the prosecution witnesses came to the conclusion that the deceased died due to injury on his head, which was given by the respondent-accused No.1 with stick. However, considering the medical evidence and the fact that the deceased died after 45 days of the incident, the learned Judge came to the conclusion that the respondent No.1 cannot be convicted for the major offence under section 302 of the IPC. He can at the most be charged with offence under Section 325 of the IPC because the injury received by the deceased at the time of incident was of serious nature. But the weapon used cannot be said to be a dangerous one as the accused has used only stick and that too only one blow was given and accordingly, the learned Judge acquitted the respondent accused No.1 for the major offence under Section 302 IPC and convicted him for the lesser offence under Section 325 of the IPC and by giving benefit of doubt to the respondent-accused No.2, he acquitted the respondent No.2 for all the offences for which he was charged.

#. As stated earlier, Division Bench of this court dismissed the appeal qua respondent accused No.2-Rudabhai Bhalabhai, therefore, we have to consider the case of respondent-accused No.1 in this appeal.

#. Learned APP, Mr.Prachhak has taken us through the relevant record of the case and reasons assigned by the learned Judge for convicting the respondent-accused No.1 for the lesser offence under Section 325 of the IPC and not for the major offence under Section 302 of the IPC. From the reasons assigned by the learned Judge, it is clear that the deceased would not have died if proper treatment was given to him. He died because of cerebral obsess after 24 days of the incident.

#. Under the circumstances, it cannot be said that the learned Judge committed any error in acquitting the respondent-accused No.1 for the major offence under Section 302 of the IPC. The incident in question took place way back on 29.8.1985 for which the respondent-accused No.1 was convicted and sentenced for the lesser offence under Section 325 of the IPC and sentenced to suffer 1 year and 6 months RI and to pay a

fine of Rs.500/=. He had not challenged that order of conviction and sentence passed by the learned Judge. Considering all these facts, we are not inclined to interfere with the impugned judgment and order passed by the learned Judge acquitting respondent accused No.1 for the major offence under Section 302 of the IPC.

In view of the above discussion, this appeal fails and is hereby dismissed. Bail bonds of the respondent-accused No.1-Haribhai Bhalabhai stands cancelled.

(B.J.Shethna, J.)

(J.R.Vora, J.)

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